

(2019) 04 J&K CK 0078

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1026 Of 2014

Abdul Majeed Bhat Abdul Rehman Sheikh

APPELLANT

Vs

State Of Jammu & Kashmir

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Jammu And Kashmir Daily Rated Workers / Work Charged Employees (Regularisation) Rules, 1994 — Rule 7, 8

Citation : (2019) 04 J&K CK 0078

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Jehangir Iqbal Ganai, Sheikh Umar, Asifa Padroo

Final Decision : Disposed Off

Judgement

1. The grievance projected by the petitioner in the instant writ petition is for regularization of his services as stated to have been earned the same in view of having worked for a period of 14 years on consolidated basis as computer operator which the respondents according to him failed to do despite entitlement of petitioner. .

Precisely the grounds put forth for grant of relief as quoted in the petition are:-

a/ The petitioner possesses the education qualification of graduation with Diploma in computer and is also trained in short hand cum typist. Having regard to the experience possessed by the petitioner and after being put to examination/ test his case was recommended by respondent no. 6 for engagement against the vacant post of typist cum computer operator. The recommendation was made on account of the fact that the office of respondent no. 6 was in dire need of a suitable typist cum computer operator so as to manage a day to day work of the office. The recommendation was accepted by respondent No. 5 resultant thereto in engagement of petitioner on consolidated basis @ Rs. 1500/- P.M. w.e.f. 1.12.2002. Having regard to the work and conduct of the petitioner respondent

No. 5 recommended the case of the petitioner for adjustment/appointment in the department. The recommendation was on the basis of the fact that the petitioner was alone handling the official work in the office and thereto in consolidating the official works like accounts, establishment etc.

b/ that the petitioner has filed a representation for regularization before Hon'ble Minister for Forest and Environment. The said representation was forwarded to respondent No. 4. On consideration of the same the respondent No. 4 sought report from respondent No. 5. Having regard to the record available, the respondent No. 5 in terms of communication dated 18.12.2010 submit his report. In terms of the report submitted it was reiterated that right from the initial engagement of the petitioner, he is continuously working in the department with zeal, dedication. Not only that it was also projected that the petitioner is the only trained computer operation in the office to handle the work. In this view of the matter the case of the petitioner was strongly recommended for regularization as against the post of computer operator or its equivalent cadre.

c/ That despite representation and the fact that the petitioner is continuously working and discharging his duties against the post of computer operator/typist since last 14 years, the services of the petitioner till date have not been regularized. It is submitted that petitioner having worked satisfactorily since last 14 years, a vested right has accrued in favour of the petitioner for being regularized. The respondents at this stage cannot deny the petitioner of his vested right of regularization against the post of computer operator/typist. Admittedly the petitioner has been performing since last 14 years the duties at part with regular employees. The petitioner has worked so with a hope that his services would be regularized. The case of the petitioner for regularization is also covered by the doctrine of legitimate expectations inasmuch as the petitioner has given his youth for smooth running of the department and at this stage of life cannot seek employment anywhere. The respondents in view of the mandate of guarantee of fair deal to its employees, are duty bound under law to regularize the services of the petitioner.

d/ The state of J&K has promulgated the Jammu & Kashmir Civil Services (Special Provisions) Act of 2010 which provides for regularization of employees who have been appointed on consolidated/adhoc or contractual basis after completing the requisite 7 years of service. The promulgation of the Act in itself is an indication of the fact that the respondent state being a model employer and taking into consideration the fact that the employees who have worked on adhoc/ consolidated basis have given their youth to the State are required to be regularized. The petitioner fulfils the requirements of eligibility as prescribed in the rules. The petitioner is working continuously against a clear vacancy of typist as available in the office of respondent no. 5 and he also possesses the requisite qualification and the eligibility required for the post. Admittedly the petitioner has completed more than 7 years of requisite service. In this view of the matter having regard to the mandate and objective of the Act of 2010, the respondents

under law are duty bound to regularize the services of the petitioner.

2. Counter has not been filed by the respondents. However, in terms of direction passed on 4.4.2018 an affidavit has been filed in which the respondents have stated that the petitioner has been engaged purely on need basis and the engagement order was for particular period of time. It needs to be mentioned that there is no post of Typist or Computer Operator available in the respondent Department. Further the appointment to such type of posts is governed by the procedure established in the Service Selection Recruitment Board and the respondent department had no power for appointment or recruitment against such post. It is further stated that the respondent No. 05 has no vacancy or posts available for typist/Computer Operator and had there been any posts available in the department that would have been referred to SSRB who would select the candidate after following proper procedure. It is further submitted that the petitioner was engaged on need basis his case has been uploaded through HIC Anantnag (figuring at S. No. 01 (Annexure R1) for regularization of his services as per SRO 520 dated 21.12.2017. The case of petitioner has already been submitted under Aadhar based Biomertic identification and Skill Profiling of Casual/Seasonal labourers/Workers (CSLWs) and will be regularized in accordance to SRO 520.

In Annexure R-1 to the supplementary affidavit engagement of the petitioner is stated to have been in December, 2000 and same having been made by District Soil & Water Conservation Officer, Anantnag/Kulgam. It may need mention herein that in Annexure-A page 6 of the petition the petitioner is shown to have been engaged on 1.12.2000. There appears an error in reciting the date of appointment of the petitioner in the petition whereas it is recited as 2002. Respondents too as said supra have admitted the petitioner has infact appointed on 1.12.2000.

3. Mr. Jehangir Iqbal, Sr. Advocate has submitted that the petitioner is qualified to be regularized under SRO 64 of 1994 as the contentions raised in the petition remain uncontroverted and in the supplementary affidavit too, the pleas raised in the petition have not been disputed. The consideration is to be accorded to him in terms of SRO 64 of 1994 instead of SRO 520 of 2017 dated 21.12.2017 as submitted in the affidavit filed on behalf of the respondents. Reliance has been placed on the judgment of this court in Shahida Bano vs. State of J&K (SWP No. 1026/2011) decided on 20.5.2013 by Massodi J. The judgment was upheld by Division Bench of this court in LPASW 207/2014. The Hon'ble Apex Court has dismissed SLP filed against it.

4. Learned AAG has submitted the contention raised at bar by the Learned Sr. Counsel that SRO 64 of 1994 is applicable to the petitioner, is not being pleaded in terms of the petition and so same required to be turned down. It is being further submitted that prayer has been made for regularization of the services which court may consider in light of the SRO 520 of 2017 subject to fulfilment of eligibility criteria.

5. Considered the rival arguments. It has been seen on perusal of the pleadings that the respondents have not denied the engagement of the petitioner who claims to have been engaged on consolidated basis of Rs. 1500/- P.M. w.e.f. 1.12.2000 pursuant to recommendation made and accepted by respondent no. 5. The qualification of which reference is found in the petition is also not in dispute. It may need a mention that the petitioner has earned diploma in computer Science and is also short hand knowing.

6. In the judgment of the Division Bench referred above, the correctness of the order passed by learned Single Bench was questioned as the learned Single Judge had directed the respondents to regularize the services of the petitioner (Shahida) who had completed 7 years of continuous and uninterrupted service from 12.5.1998. Her claim had been rejected as she was not found entitled to benefit under SRO 64 of 1994. The judgment also gives reference of SWP No. 1404 of 2008 filed in this regard by the said petitioner.

7. On perusal of the judgment of the Division Bench of this court it appears the cut off date originally fixed for the benefit of SRO 64 of 1994 was extended from 1.4.1994 to 6.11.2001 in terms of Govt. Order No. 1285 dated 6.11.2001 .

8. On perusal of the judgment of learned Single Judge referred above, it appears that bench at the time of passing of the judgment had taken into consideration the directions passed in SWP NO. 1404/2008 . Question accordingly taken up for determination was whether casual labrourer who after 1.4.1994 was allowed to continue without any interruption for fairly long period had entitlement to regularization. The court had taken note of the fact for engagement does not fall within the Rule 7 and cannot be labeled as illegal or unauthorized. She was allowed to work without any interruption for next 12 years and continued to work as such till date. Further observation with regard to same are as:

"In the present case engagement as "casual Worker" is not hit by the rule 7 of Rules of 1994. Petitioner, because of her uninterrupted and continuous service, is to be treated as a "daily rated worker" and as a matter of fact has been directed to be so treated by this court while disposing of SWP No. 1404/2008. The petitioner, therefore is entitled to the benefit of regularization in terms of Jammu & Kashmir Daily Rated workers/Work charged Employees (Regularization) Rules, notified vide SRO 64 of 1994.

9. Direction was accordingly given to the respondents "to treat her as a "daily rated worker". She cannot be denied the benefits of regularization on the ground that she was engaged after Ist April 1994 in violation of mandate of Rule 7, for the reason that her case does not fall within the purview of rule 7. Rule 8, applicable in case of daily rated worker/work charged employees in place on Ist April 1994 to a person engaged after Ist April 1994, though satisfying eligibility conditions laid down in Rule 4 of the rules of 1994".

10. In Naresh Kumar Versus State 2009 (Supp)JKJ 263 the petitioner had sought the benefit of regularization. He had been working in Police Department of State

Government on consolidated pay of Rs. 35/- per day from 4th August, 1997 upto 07/2015 without any interruption. He was disengaged as Daily Rated Worker on the ground that he stood engaged after 31.03.1994.

11. Learned Single Bench after taking note of the pleas taken in the petition and Rule 8 of SRO 64 of 1994 came to the conclusion that it can safely be stated that any person who has not completed seven years of service as on 31.3.1994 would be entitled for regularization will also apply to those persons who got appointed after March, 1994. This interpretation will achieve the object and purpose of SRO, which came into force for providing permanent status to the Daily Rated Workers under SRO 64 of 1994. The mischief, which is sought to be achieved, if any, in the rules will get eliminated. Accordingly, termination of the petitioner had been set aside and the respondents are directed to reengage him and take decision for regularization of his services under SRO 64 of 1994 within a period of three months.

12. The judgment of Hon'ble Apex Court in Piara's Singh's case reference of which is given most of the cases, disposed of, either by Division Bench or Single Bench of this court, the principal question which had fell for determination was with regard to regularization of the employees appointed on adhoc basis who continued on some positions for a pretty long time. Their lordship did not find any merit in the plea that a case can be said to have made for regularization by an adhoc employees who has worked for one year. The presumption that there is need for such a regular post is not to be drawn readily has been also stated. It cannot be the 'rule of thumb' in each cases. Adhoc employees who continued for years on adhoc or temporary basis should not be replaced by another adhoc or temporary employee was also enunciated. Replacement has to be made by a regularly selected employee to avoid arbitrary action on the part of the appointing authority. The process of regularization of such employees who have worked for a considerable period was up held and appreciated.

13. Reverting back to the instant case it is already noted that the respondents have initiated the process of regularization of the petitioner herein in terms of SRO 520 of 2017 dated 21.12.2017. There is no dispute about the engagement of the petitioner herein in terms of Order No. ASO/Sc-118/Ang dated 01`/12/2000 Government order No. 1285-GAD of 2001 DATED 6.11.2001 of which reference is found in the judgment of Hon'ble Division Bench would not attracted to the instant case for the reason that the petitioner cannot be said to be daily rated worker within the definition of SRO 64 of 1994. Furthermore, benefit in terms of Govt. Order No. 1285-GAD of 2001 is available to such adhoc appointees who had been working on some non-gazetted post beyond 29.12.1988 till date of issuance of the said order. It would be proper in this regard quote herein the relevant extract of the said Govt. Order.

"Now, therefore, it is hereby ordered that all adhoc appointees to non-gazetted posts recruited from time to time beyond 29/12/1988 till the date of issuance of this order who are still in service be considered for regularization after

completing seven years of continuous service from the date of appointment dispensing with reference of posts held by them to Service Selection Board"

Shahida Bano's judgment referred above has to be interpreted while keeping these important facts in mind.

14. The case of the petitioner is clearly covered by J&K Civil Services (Special Provisions) Act of 2010. It needs a mention herein that petitioner cannot be treated at par with contingent paid worker whose services would be liable to be terminated at the will of employer. He has continued to be so fairly for long spell since 2000 till date. A presumption as such has arisen that there is regular need for his service and the feasibility of his regularization as such to be considered by the respondents. Broader principles of Piara Singh's case would be also applicable in the instant case. His engagement cannot also labelled (illegal or unauthorized) and so his services cannot be dispensed with now when he has contributed his entire youth in the respondent department.

15. Viewed thus the petition is allowed. Respondents to accord consideration to the petitioner's regularization from the date he has completed the required length of service in terms of J&K Special Provisions Act, 2010 read with relevant rules occupying the field and release all the benefits due to him upon regularization of his services with effect from the date of regularization. Exercise to be completed within a period of four weeks from the date of receipt of copy of order by respondents.

16. Disposed of accordingly.